MONTANA LEGISLATIVE HISTORY

Chapter 203 ~~19~~ 2011

Bill H _____ S 268 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s) h	3/10	C	Hearing Date(s) h	2/00	C
v	3/14	C	v	2/14	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

2011 Session

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC1003 Current Bill Text: HTML PDF Previous Version(s)
Bill Type - Number: SB 268 Fiscal Note
Short Title: Referendum to require election of supreme court justices from districts
Primary Sponsor: Joe Balyeat
Chapter Number: 203 PDF
All Available Audio for this Bill

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 57

Print Friendly

Action - Most Recent First	Date	Votes Yes	Votes No	Committee *(What's New?)*
Chapter Number Assigned	04/18/2011			
(S) Filed with Secretary of State	04/18/2011			
(H) Signed by Speaker	04/13/2011			
(S) Signed by President	04/13/2011			
(C) Printed - Enrolled Version Available	04/08/2011			
(S) Returned from Enrolling	04/08/2011			
(S) Sent to Enrolling	04/07/2011			
(H) Returned to Senate	04/07/2011			
(H) 3rd Reading Concurred	04/07/2011	59	40	
(H) Scheduled for 3rd Reading	04/07/2011			
(C) Printed - New Version Available	04/06/2011			
(H) 2nd Reading Concurred	04/06/2011	65	35	Audio
(H) 2nd Reading Motion to Amend Failed	04/06/2011	34	65	
(H) 2nd Reading Motion to Amend Failed	04/06/2011	38	61	
(H) 2nd Reading Motion to Amend Failed	04/06/2011	32	67	
(S) Fiscal Note Printed	04/06/2011			

(H) Scheduled for 2nd Reading	04/06/2011			
(S) Fiscal Note Received	04/05/2011			
(S) Fiscal Note Requested	04/04/2011			
(H) 2nd Reading Pass Consideration	03/30/2011			
(H) Scheduled for 2nd Reading	03/30/2011			
(H) Committee Report--Bill Concurred	03/15/2011			(H) Judiciary
(H) Committee Executive Action--Bill Concurred	03/14/2011	14	6	(H) Judiciary
(H) Hearing	03/10/2011			(H) Judiciary (Audio)
(H) Referred to Committee	03/03/2011			(H) Judiciary
(H) First Reading	03/03/2011			
(S) Transmitted to House	02/18/2011			
(S) 3rd Reading Passed	02/18/2011	30	20	
(S) Scheduled for 3rd Reading	02/18/2011			
(S) 2nd Reading Passed	02/17/2011	28	22	Audio
(S) Scheduled for 2nd Reading	02/17/2011			
(S) Committee Report--Bill Passed	02/14/2011			(S) Judiciary
(S) Committee Executive Action--Bill Passed	02/14/2011	7	5	(S) Judiciary
(S) Hearing	02/10/2011			(S) Judiciary (Audio)
(C) Introduced Bill Text Available Electronically	02/04/2011			
(S) Referred to Committee	02/04/2011			(S) Judiciary
(S) First Reading	02/04/2011			
(S) Introduced	02/04/2011			
(C) Draft Delivered to Requester	02/02/2011			
(C) Draft Ready for Delivery	01/31/2011			
(C) Draft in Assembly/Executive Director Review	01/31/2011			
(C) Draft in Final Drafter Review	01/31/2011			
(C) Bill Draft Text Available Electronically	01/31/2011			
(C) Draft in Input/Proofing	01/31/2011			
(C) Draft to Drafter - Edit Review [SAB]	01/29/2011			
(C) Draft in Legal Review	01/27/2011			
(C) Draft to Requester for Review	01/27/2011			
(C) Draft Back for Requester Changes	01/27/2011			
(C) Draft to Requester for Review	01/26/2011			
(C) Draft Back for Requester Changes	01/25/2011			
(C) Draft to Requester for Review	01/22/2011			
(C) Draft Back for Requester Changes	01/21/2011			

(C) Draft On Hold	01/13/2011			
(C) Draft to Requester for Review	01/07/2011			
(C) Draft Back for Requester Changes	01/07/2011			
(C) Draft to Requester for Review	12/31/2010			
(C) Draft Request Received	11/29/2010			

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Balyeat	Joe	
Drafter	Lane	Valencia	
Primary Sponsor	Balyeat	Joe	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Referendum		Simple	REF
Judges and Justices (see also: Courts)		Simple	JUD

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number: 203
DEADLINE
Category: REFERENDUM PROPOSALS
Transmittal Date: 03/30/2011
Return (with 2nd house amendments) Date: 04/30/2011

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections		Effective upon approval by the electorate

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

04/10/2012 03:10 PM Mountain Time

Look Up Bill Information	Committee and Hearing Information
House Agenda(s)	House Journals		Senate Agenda(s)	Senate Journals
Legislator Information	Reports

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SENATE BILL NO. 268

INTRODUCED BY J. BALYEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT SUPREME COURT JUSTICES BE ELECTED AND APPOINTED FROM SUPREME COURT DISTRICTS; ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION TO BE HELD CONCURRENTLY WITH THE 2012 PRIMARY ELECTION; AMENDING SECTIONS 3-2-101 AND 3-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-2-101, MCA, is amended to read:

"3-2-101. Number, election, and term of office -- selection of chief justice. (1) The supreme court consists of a chief justice and six associate justices who ~~are elected by the qualified electors of the state at large~~ must be qualified electors of the district from which they are elected, with each member elected from a separate district of the state as provided in [section 3]. Each justice must be elected at the general ~~state elections~~ election next preceding the expiration of the ~~terms~~ term of office of ~~their predecessors, respectively,~~ the justice's predecessor and ~~hold their offices~~ holds office for the term of 8 years from ~~and after~~ the first Monday of January ~~next~~ succeeding ~~their~~ the justice's election.

(2) After the general election in 2016, the chief justice must be selected by the majority vote of the seven justices at the first meeting of the court in each year after a general election."

Section 2. Section 3-2-102, MCA, is amended to read:

"3-2-102. Qualifications and residence. (1) A person is not eligible for the office of justice of the supreme court unless the person is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office. Once elected from a district, a justice is not required to reside within the district during the justice's service in office.

(3) A supreme court justice must, at the time of initial election, be a qualified elector of the supreme court district from which the justice is elected. A supreme court justice appointed to fill a vacancy must, at the time of appointment, be a qualified elector of the same initial supreme court district as the justice being replaced, and in an election following an appointment, the elected justice must be a qualified elector of the initial district."

NEW SECTION. **Section 3. Supreme court districts defined -- number of judges.** (1) In this state there are seven supreme court judicial districts, distributed as follows:

(a) 1st district: Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Liberty, Meagher, Pondera, Teton, and Wheatland Counties;

(b) 2nd district: Big Horn, Blaine, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, and Wibaux Counties;

(c) 3rd district: Yellowstone County;

(d) 4th district: Lewis and Clark, Deer Lodge, Granite, Jefferson, Ravalli, Powell, and Broadwater Counties;

(e) 5th district: Flathead, Lincoln, Glacier, Sanders, and Toole Counties;

(f) 6th district: Gallatin, Madison, Beaverhead, and Silver Bow Counties;

(g) 7th district: Missoula, Lake, and Mineral Counties.

(2) There must be one supreme court justice selected from each district.

(3) The legislature shall review the districts after each decennial census for purposes of maintaining districts with approximately equal populations while following county lines.

NEW SECTION. **Section 4. Transition.** (1) [This act] may not remove any justice that is holding office on [the effective date of this act] during the term for which the justice was elected or appointed. After [the effective date of this act], each sitting associate justice must be assigned to the judicial district that corresponds to the associate justice's current seat number and the chief justice must be assigned to the seventh district.

(2) (a) Except as provided in subsection (2)(b), each supreme court justice who chooses to seek reelection at the end of the justice's current term shall run for reelection in the district to which the justice is assigned under subsection (1).

(b) A sitting justice that chooses to seek election in a district other than the district assigned under

subsection (1) may run for election in the district if the justice resigns the justice's current seat effective as of the date the justice files for election in the district to which the justice seeks election.

(3) In the 2012 election, the two candidates receiving the most votes in the primary for each seat up for reelection advance to the 2012 general election for the district that corresponds to the same seat number.

NEW SECTION. **Section 5. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 3, chapter 2, and the provisions of Title 3, chapter 2, apply to [section 3].

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** [This act] is effective upon approval by the electorate.

NEW SECTION. **Section 8. Applicability.** [This act] applies to the election and appointment of supreme court justices to terms that begin on or after [the effective date of this act].

NEW SECTION. **Section 9. Submission to electorate.** [This act] shall be submitted to the qualified electors of Montana at a special election to be held concurrently with the primary election held in the spring of 2012 by printing on the ballot the full title of [this act] and the following:

[] FOR requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

[] AGAINST requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

- END -

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill #	SB0268	Title:	Referendum to require election of supreme court justices from districts
Primary Sponsor:	Balyeat, Joe	Status:	As Introduced

☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2012 Difference	FY 2013 Difference	FY 2014 Difference	FY 2015 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Enterprise - SOS	$14,348	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Enterprise - SOS	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: MCA 13-27-401 requires that the Secretary of State print a "Voter Information Pamphlet" for all ballot issues. Each county is then responsible for the costs associated with mailing the printed "Voter Information Pamphlet" to active registered voters in Montana. The "Voter Information Pamphlet" is traditionally prepared and mailed once every election cycle, in advance of the regularly scheduled General Election. Since SB 268 specifically calls for a special election on the proposed referendum to be held concurrently with the 2012 primary election, this would require the publication and mailing of two separate "Voter Information Pamphlets" for 2012: One in the spring of 2012 that addresses the referendum proposed in SB 268, and an additional one in the fall of 2012 that addresses all other regularly scheduled referendum and initiatives.

FISCAL ANALYSIS

Assumptions:

Secretary of State's Office

1. The Secretary of State's Office would incur costs for development and printing of the voter information pamphlet (VIP).
2. $ 8,681 – Printing (estimated ¼ of the 2010 VIP) – paid for by the Secretary of State.
3. $1,667 – Shipping (estimated ¼ of the 2010 VIP) – paid for by the Secretary of State.
4. $2,400 – Accessible formats (Braille, audio) – paid for by the Secretary of State.
5. $1,600 – Secretary of State staff time.

Secretary of State

	FY 2012 Difference	FY 2013 Difference	FY 2014 Difference	FY 2015 Difference
Fiscal Impact:				
Expenditures:				
Personal Services	$1,600	$0	$0	$0
Operating Expenses	$12,748	$0	$0	$0
TOTAL Expenditures	$14,348	$0	$0	$0
Funding of Expenditures:				
Enterprise - SOS	$14,348	$0	$0	$0
TOTAL Funding of Exp.	$14,348	$0	$0	$0
Revenues:				
Enterprise - SOS	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
Enterprise - SOS	($14,348)	$0	$0	$0

Effect on County or Other Local Revenues or Expenditures:

1. $129,300 – Cost to counties to mail a "Voter Information Pamphlet" for the 2012 Primary Election.
   a. Mailing (431,000 VIPs at 30¢ each) – Paid for by local county governments.

Technical Notes:

1. Should the referendum contained in SB 268 be passed by the voters, there would be additional public information costs to educate Montana voters that they will no longer be able to vote for all 7 members of the State Supreme Court, and instead will be allowed to only vote for one member every 8 years.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

MINUTES

MONTANA SENATE
62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Terry Murphy, on February 10, 2011 at 8:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Terry Murphy, Chair (R)
Sen. Jim Shockley, Vice Chair (R)
Sen. Anders Blewett (D)
Sen. Jeff Essmann (R)
Sen. Greg Hinkle (R)
Sen. Cliff Larsen (D)
Sen. Lynda Moss (D)
Sen. Chas Vincent (R)

Members Excused: Sen. Shannon Augare (D)
Sen. Rowlie Hutton (R)
Sen. Larry Jent (D)
Sen. Jim Peterson (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 17, 1/24/2011; SB 18, 1/24/2011; SB 268, 1/24/2011
Executive Action:	SB 185-Do Pass, SB 167-Tabled

HEARING ON SB 268

Opening Statement by Sponsor:

02:05:52 Sen. Joe Balyeat (R), SD 34, opened the hearing on SB 268, Referendum to require election of supreme court justices from districts.
EXHIBIT(jus33a28)

Proponents' Testimony:

02:23:47 Chuck Denowh, United Property Owners of Montana
EXHIBIT(jus33a29)

Opponents' Testimony:

02:26:23 Bruce Spencer, State Bar of Montana
02:28:01 Kate McGrath Ellis, Attorney, Montana Defense Trial Lawyers

Informational Testimony:

02:31:02 Al Smith, Montana Trial Lawyers (MTLA)

Questions from Committee Members and Responses:

02:33:30 Sen. Blewett
02:34:00 Sen. Balyeat
02:36:31 Sen. Essmann
02:39:01 Mr. Spencer
02:41:27 Sen. Blewett
02:42:40 Sen. Balyeat
02:45:42 Sen. Larsen
02:46:12 Sen. Balyeat
02:48:48 Sen. Moss
02:49:44 Sen. Balyeat
02:50:17 Sen. Murphy
02:50:30 Sen. Balyeat
02:51:30 Sen. Blewett
02:52:08 Sen. Balyeat

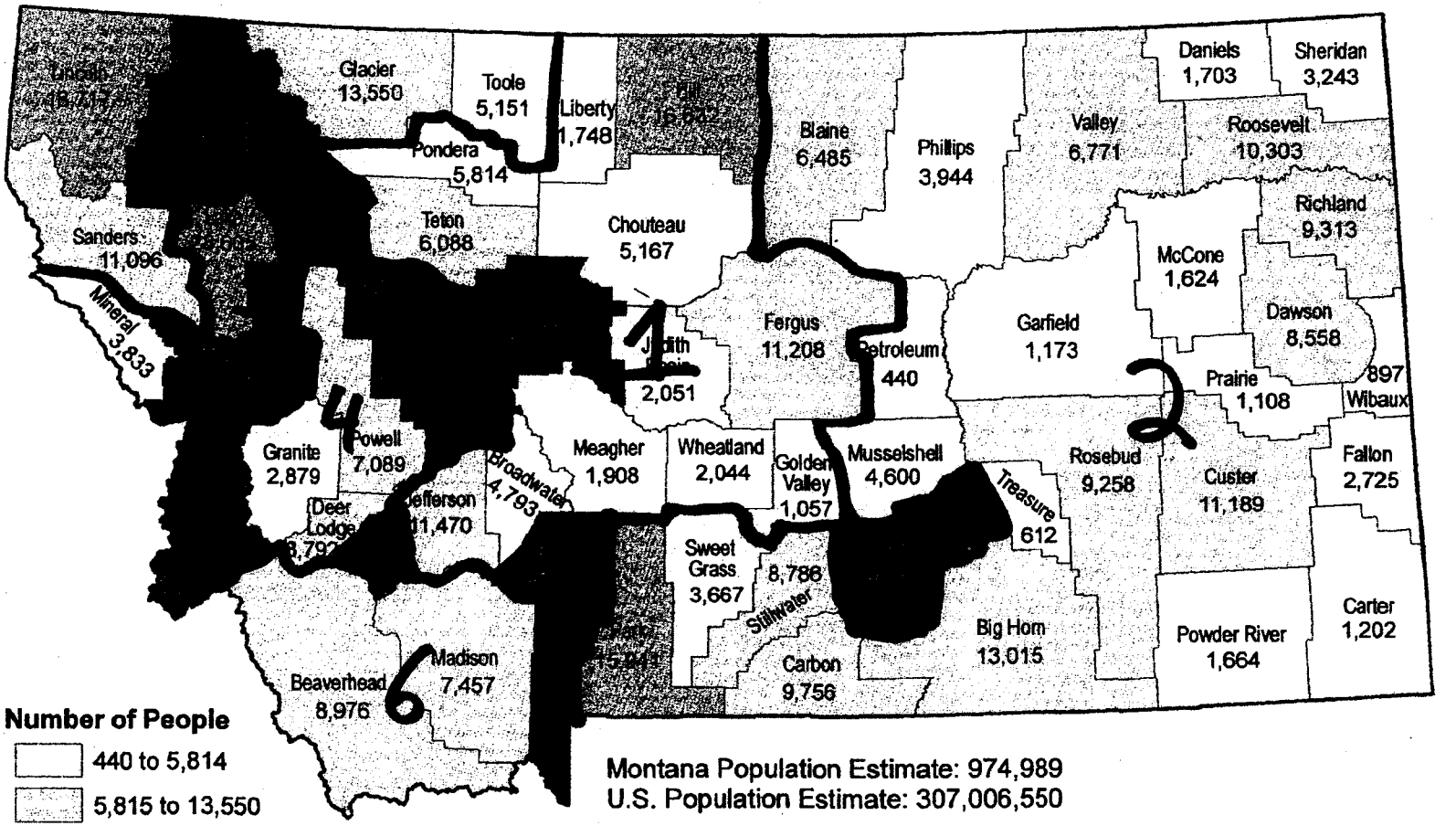
Closing by Sponsor:

02:56:54 Sen. Balyeat
EXHIBIT(jus33a30)

03:05:41 Sen. Hinkle

SENATE JUDICIARY
EXHIBIT NO. 28
DATE 2/10/11
BILL NO. SB268

Montana County Population Estimates - July 1, 2009



Number of People

- 440 to 5,814
- 5,815 to 13,550
- 13,551 to 28,605
- 28,606 to 61,942
- 61,943 to 144,797

Montana Population Estimate: 974,989
U.S. Population Estimate: 307,006,550

Map by:
Census & Economic Information Center
Montana Department of Commerce
301 S. Park Ave, Helena, MT 59601
406-841-2740 email:ceic@mt.gov
http://ceic.mt.gov

Source: Population Division, U.S. Census Bureau, April 1, 2000 to July 1, 2009 (CO-EST2009-01-30), Released, March 2010

April 2010 - county_pop_est_nos09.mxd

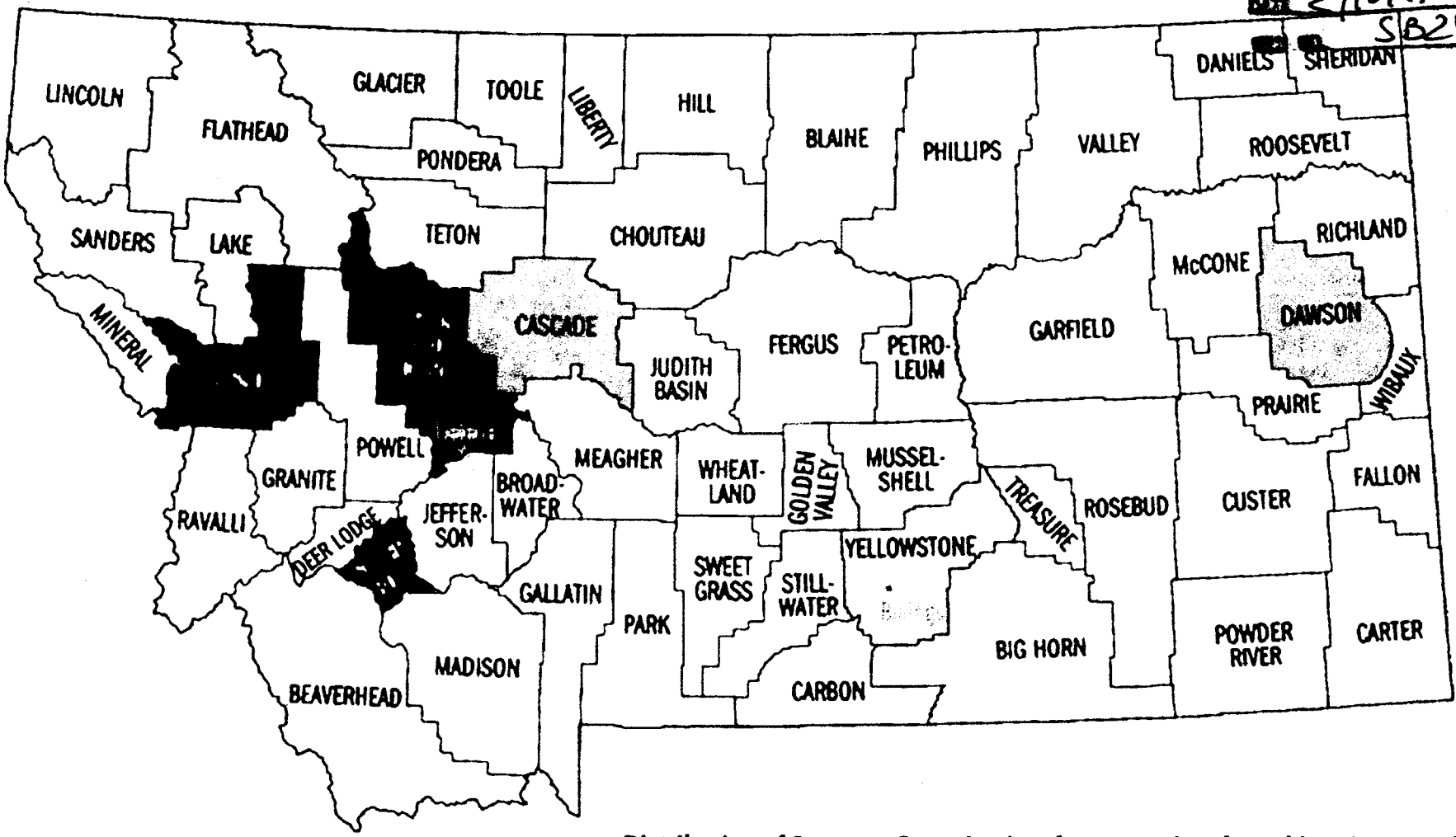
* Based on 2009 County Population Estimates

Cascade	82,178			Yellowstone	144,797			Flathead	89,624			Missoula	108,623
Choteau	5,167							Lincoln	18,717			Lake	28,605
Fergus	11208							Glacier	13,550			Mineral	3,833
Gold Vaelley	1,057							Sanders	11,096				
Hill	16,632							Toole	5,151				
Judithbasin	2,051												
Liberty	1,748												
Meagher	1,908												
Pondera	5,814												
Teton	6,088												
Wheatland	2,044												
		Valley	6,771										
		Wibaux	897										

Average of 6 districts (not including Yellowstone) is 138,380 Average.
Smallest is only -1.8% from Average.
Largest (other than Yellowstone) is only +1.9% from Average.

Average of 7 districts including Yellowstone is 139,297 Average.
Yellowstone is only +3.9% from Average.
Smallest is only -2.4% from Average.
Largest other than Yellowstone is only + 1.3% from Average.

SENATE JUDICIARY
EXHIBIT NO. 29
DATE 2/10/11
SB 268



Distribution of Supreme Court Justices from counties elected (1970-present)

- 4 or more justices
- 3 justices
- 2 justices
- 1 justice

SENATE JUDICIARY
EXHIBIT NO. 30
DATE 2/10/11
BILL NO. SB268

SB 268 Referendum to require election of Supreme Court justices from 7 districts across Montana

(Senator Joe Balyeat R-Belgrade)

I've been working on this concept for at least six years. Think I've finally got it right. First – What the bill does. Second – Why we should do this... send it to the people to vote.

Here's what it does. The bill divides the state into seven districts of approximately equal population. (See map and population chart). Each district is matched to a Supreme Court seat, seats 1 thru 6, with the Chief Justice assigned to district 7. Each subsequent SC judge would be from one of those seven districts, and be elected from one of those seven districts.

The proposed act would be submitted to the voters of Montana along with the 2012 primary election and, if approved by the voters, it will apply to the 2012 general election in November. 2012 is a presidential election year, there should be high voter interest and high turnout, so I wanted the voters to get a crack at this and have it first applied as soon as possible.... Rather than wait till an off-year election like 2014, which is three years down the road.

To make the transition to local district elections as easy as possible for the current sitting justices, the bill provides 4 different escape hatches:

1)The district residency requirement will be waived for all sitting Justices. Justices must reside in the district they are running for in the initial election only, not when they run for re-election. So after they 're first elected to the court, it's obvious that the justices are then free to move their residency to Helena.

2) To the greatest extent possible the current Court justices have been matched to districts based on prior residency.

3) If more than one justice is from the same district, I usually gave preference to the one with seniority, but assigned the more junior judge's seat to the district which bordered their current or prior residency.

4) As a fail-safe, current Justices may run in any district; not just their assigned district. However, they must resign their assigned seat at the time they file in another district, to prevent any of them from trying to get 2, or 7, bites of the apple.

Now, Why should we do this?

You can see that with these four provisions, that Senate Bill 268 isn't seeking to replace or remove current justices, but rather bring justices closer to their MT constituents, and vice versa. It should permit more quality candidates to run for the court, in local races where their reputations will impact their elections, rather than allowing big money to dictate statewide elections where most voters know little about the two candidates running and their vote is often an uneducated guess based mostly on slick ad campaigns, with not much real knowledge of either candidate's track record. With more local candidates involved in localized races, there will be more transparency in the election process, and voters will have a greater understanding of the candidates' backgrounds and credentials.

Moreover, if diversity is good for the legislative process, I'd submit it's also good for the courts. Having a broad cross-section of Montanans serving in the legislature brings multiple perspectives -- resulting in balanced legislation. Likewise, a Supreme Court similarly spread across Montana would reap the same benefits, and reflect the diverse perspectives favored by each local district. It's not a good idea to have a Court comprised mostly of folks with an "inside the beltway" Helena mindset. Nor does it reflect the broad diversity of Montana's small towns and agrarian lifestyle when all 7 judges come from 3 or 4 big cities, reflecting a 'big city" mentality in their decision-making process. And it isn't just the rural/urban divide that needs balanced representation, there's merit in geographic diversity as well. Eastern Montana needs to be heard in Court discussions every bit as much Western Montana. The perspectives of Yellowstone County need to be brought out and contrasted with the Missoula County perspective. The flat-landers and the mountainside guys like me who've grown one leg shorter than the other all want our voices at least heard in the discussion, even if some other opinion eventually prevails.

So Senate Bill 268 seeks balanced and fair representation, and minimizes the influence of money in Supreme Court races to permit more candidates to seek seats. This proposal brings needed geographic balance to the court,and voters will finally have a chance to know who they're voting for in our supreme court elections. In the current system,

voters have no clue about any of the candidates and it comes down to a coin flip. Unfortunately, usually one of the candidates has more coins than the other guy, because special interest groups funnel the money to the candidate they think will most side with their issues on the court.

Eight other states elect Supreme Court Justices by district. Kentucky, Louisiana, Mississippi, and Oklahoma all do straight judicial elections (either partisan or non) by district. Illinois, Nebraska , South Dakota, and New York all use variations of geographic districts for their supreme court seats.

The question may have crossed your mind... What does the Montana Constitution and the Con-Con say about the issue. The constitution, Article VII, section 8, subsection (1) provides that supreme court justices shall be "elected by the qualified electors as provided by law.

Our legal services director has pointed out the following from the ConCon transcripts. It is a motion that failed that would have provided for election by the electors of the state at large. In particular, there was a substitute motion made during the ConCon, as follows:

CHAIRMAN GRAYBILL: We'll have a roll call vote. The motion is that "the justices of the Supreme Court *shall be elected by the electors of the state* ***at large***.... " Transcript p. 1097 (emphasis added)"

And again, that motion failed, which clearly indicates that the majority of MT's ConCon didn't want to constitutionally mandate statewide Supreme Court races, but instead let them be set up "as provided by law"... meaning letting the legislature (and perhaps the people as well, if by referendum) decide whether to do it at large statewide or under some other system.

Mr. Chairman, members of the committee, I think I can flesh this out for you best by answering your specific questions about how it works, and why we need to do it. So I'll cut my introduction short and urge you to be thinking of some questions for me. I know Judiciary is extremely busy, so I deliberately didn't recruit any proponents (I may have recruited some opponents). But I do have emails from at least two different district judges indicating their support for this concept. One writes, "I strongly support... district election for Supreme Court justices. [It will] result in a more varied court and attract better candidates."

So , with that, I'll sit and listen to proponents, if any, then opponents. And afterwards, I'll tell you exactly why the opponents are all wrong. Thank you.

MONTANA STATE SENATE

ROLL CALL

2011 JUDICIARY COMMITTEE

DATE: 2/10/11

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, TERRY MURPHY	~	
VICE CHAIRMAN, JIM SHOCKLEY	~	
SENATOR JEFF ESSMANN	~	
SENATOR SHANNON AUGARE		~
SENATOR ANDERS BLEWETT	~	
SENATOR GREG HINKLE	~	
SENATOR ROWLIE HUTTON		~
SENATOR LARRY JENT		~
SENATOR CLIFF LARSEN	~	
SENATOR LYNDA MOSS	~	
SENATOR JIM PETERSON		~
SENATOR CHAS VINCENT	~	

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, February 10, 2011
SB 268 - Referendum to require election of supreme court justices from districts
Sponsor: **Senator Joe Balyeat**

PLEASE PRINT

Name	Representing	Support	Oppose
Kate McGrath Ellis	MDTL		X
Bruce Spencer	St. B. Bar		X
Chuck Denowh	UPOM	X	
Loren H. Young	Richland Co. Commissioner	X	
Carole Smackin	People Power League		
Shane Gordon	Richland Co. Commissioner	X	
Al Smith	MTHA		X - Late
Tim Ravnoal	MCCTP	X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Terry Murphy, on February 14, 2011 at 10:00 A.M., in Room 405 Capitol

ROLL CALL

Members Present:

Sen. Terry Murphy, Chair (R)
Sen. Jim Shockley, Vice Chair (R)
Sen. Shannon Augare (D)
Sen. Anders Blewett (D)
Sen. Jeff Essmann (R)
Sen. Greg Hinkle (R)
Sen. Rowlie Hutton (R)
Sen. Cliff Larsen (D)
Sen. Lynda Moss (D)
Sen. Jim Peterson (R)
Sen. Chas Vincent (R)

Members Excused: Sen. Larry Jent (D)

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 262, 2/7/2011
Executive Action:	SB 42-Do Pass As Amended, SB 97-Do Pass, SB 268-Do Pass

11:15 A.M. Recess
11:30 A.M. Committee Resumes

01:27:09 Sen. Augare
01:27:34 Sen. Murphy
01:28:04 Sen. Hinkle
01:28:40 Sen. Blewett
01:28:57 Ms. Lane
01:30:34 Sen. Blewett
01:32:59 Chairman Murphy
01:33:41 Sen. Blewett
01:34:42 Sen. Hinkle
01:35:41 Sen. Essmann
01:37:41 Sen. Hinkle
01:38:24 Sen. Essmann
01:38:31 Sen. Hinkle

EXECUTIVE ACTION ON SB 268

01:39:55 Sen. Blewett
01:40:16 Sen. Shockley

01:40:25 **Motion:** Sen. Hinkle moved that **SB 268 DO PASS**.

01:40:35 **Motion**: Sen. Blewett moved that **SB 268 BE AMENDED WITH A CONCEPTUAL AMENDMENT PAGE 3, LINE 19 "....SPECIAL ELECTION/PRIMARY IN THE SPRING 2012...", INSERT "...GENERAL ELECTION IN NOVEMBER 2012...."**

DISCUSSION:

01:43:16 Sen. Lane
01:44:36 Sen. Murphy
01:45:16 Sen. Augare
01:45:51 Sen. Lane
01:47:37 Sen. Essmann
01:49:55 Sen. Blewett
01:50:48 Sen. Lane
01:53:24 Ms. Lane

01:54:05 **Vote:** Motion failed 5-7 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Jent, Sen. Larsen and Sen. Moss voting aye. Sen. Jent and Sen. Peterson voted by proxy.

01:54:55 Sen. Moss
01:56:03 Sen. Blewett
01:58:38 Sen. Essmann

(Sen. Shockley absent from room)

02:00:51 **Vote:** Motion carried 7-5 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Jent, Sen. Larsen and Sen. Moss voting no. Sen. Jent, Sen. Peterson and Sen. Shockley voted by proxy.

MONTANA STATE SENATE

ROLL CALL

2011 JUDICIARY COMMITTEE

DATE: 2/14/11

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, TERRY MURPHY		
VICE CHAIRMAN, JIM SHOCKLEY		
SENATOR JEFF ESSMANN		
SENATOR SHANNON AUGARE		
SENATOR ANDERS BLEWETT		
SENATOR GREG HINKLE		
SENATOR ROWLIE HUTTON		
SENATOR LARRY JENT		
SENATOR CLIFF LARSEN		
SENATOR LYNDA MOSS		
SENATOR JIM PETERSON		
SENATOR CHAS VINCENT		

SENATE STANDING COMMITTEE REPORT

February 14, 2011

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 268** (first reading copy -- white) **do pass.**

Signed: _____
Senator Terry Murphy, Chair

- END -

Committee Vote:
Yes 7, No 5
Fiscal Note Required __

SB0268001SC.sdr

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Ken Peterson, on March 10, 2011 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Ken Peterson, Chairman (R)
Rep. Krayton Kerns, Vice Chairman (R)
Rep. Liz Bangerter (R)
Rep. Robyn Driscoll (D)
Rep. Kris Hansen (R)
Rep. Bill Harris (R)
Rep. Cleve J. Loney (R)
Rep. Margaret (Margie) MacDonald (D)
Rep. Carolyn Pease-Lopez (D)
Rep. Joe Read (R)
Rep. Keith Regier (R)
Rep. Dan Skattum (R)
Rep. Bob Wagner (R)

Members Excused: Rep. Michael (Mike) More (R)

Members Absent: Rep. Diane Sands, Vice Chairman (D)
Rep. Ellie Boldman Hill (D)
Rep. David Howard (R)
Rep. Mike Menahan (D)
Rep. Jesse O'Hara (R)
Rep. Wendy Warburton (R)

Staff Present: Karen Armstrong, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 268, 3/4/2011; SB 238, 3/4/2011; SB 337, 3/4/2011

Executive Action: SB 58, SB 106, SB 217, SB 279, SB 304

00:48:32 Rep. Wagner
00:49:10 Rep. Hill

00:51:46 **Vote:** Motion failed 9-11 by roll call vote with Rep. Bangerter, Rep. Hill, Rep. Kerns, Rep. MacDonald, Rep. Pease-Lopez, Rep. Peterson, Rep. Read, Rep. Sands and Rep. Skattum voting aye..

00:51:55 **Motion/Vote:** Rep. Kerns moved that **SB 217 BE TABLED AND THE VOTE REVERSED**. Motion carried unanimously by voice vote.

01:02:28 Meeting recessed until 9:00 am.
01:02:43 Meeting resumed with Vice Chairwoman Sands absent.

HEARING ON SB 268

Opening Statement by Sponsor:
01:08:26: Sen. Joe Balyeat (R), SD 34, opened the hearing on SB 268, Referendum to require election of supreme court justices from districts.
EXHIBIT(juh54a03)
EXHIBIT(juh54a04)
EXHIBIT(juh54a05)
EXHIBIT(juh54a06)

01:13:51 Vice Chairwoman Sands returned.

Proponents' Testimony:
01:16:28 Chuck Denowh, United Property Owners of Montana
EXHIBIT(juh54a07)

Opponents' Testimony:
01:20:21 Joe Sullivan, President, State Bar of Montana
01:25:50 John Alke, attorney, self
01:30:03 Rep. O'Hara exited.
01:31:44 Scott Crichton, Executive Director, American Civil Liberties Union of Montana (ACLU)
EXHIBIT(juh54a08)
01:35:17 Rep. Howard exited.
01:36:19 Robert Filipovich, self
EXHIBIT(juh54a09)
01:38:59 Rep. More exited.
01:42:56 Al Smith, Montana Trial Lawyers Association (MTLA)
01:44:18 Rep. More returned.

Informational Testimony: None

Questions from Committee Members and Responses:
01:46:56 Vice Chairman Kerns
01:47:06 Rep. Howard returned.
01:47:23 Sen. Balyeat

01:47:34	Rep. Kerns
01:47:43	Sen. Balyeat
01:48:22	Rep. Pease-Lopez exited.
01:49:30	Rep. Harris
01:50:37	Sen. Balyeat
01:50:56	Rep. Harris
01:51:26	Sen. Balyeat
01:51:42	Rep. Harris
01:51:54	Vice Chairwoman Sands
01:52:18	Sen. Balyeat
01:52:37	Vice Chairwoman Sands
01:53:17	Sen. Balyeat
01:53:25	Vice Chairwoman Sands
01:53:37	Sen. Balyeat
01:53:44	Rep. Pease-Lopez returned.
01:54:47	Sen. Balyeat
01:55:30	Vice Chairwoman Sands
01:55:46	Sen. Balyeat
01:56:23	Rep. Bangerter
01:57:00	Sen. Balyeat
01:58:55	Rep. Bangerter
01:59:20	Rep. Menahan
01:59:38	Mr. Denowh
01:59:42	Rep. Menahan
01:59:48	Mr. Denowh
02:00:25	Rep. Menahan
02:00:52	Mr. Denowh
02:01:05	Rep. O'Hara returned.
02:01:17	Rep. Menahan
02:01:47	Mr. Denowh
02:02:12	Rep. Menahan
02:02:49	Mr. Denowh
02:03:09	Rep. MacDonald
02:04:52	Sen. Balyeat
02:06:56	Rep. MacDonald
02:07:24	Rep. Hill
02:09:20	Mr. Sullivan
02:10:41	Rep. Hill
02:10:54	Mr. Sullivan
02:11:45	Rep. More
02:12:49	Mr. Sullivan
02:12:55	Rep. More
02:15:12	Mr. Sullivan
02:16:04	Rep. More
02:16:39	Mr. Smith
02:16:45	Vice Chairwoman Sands exited.
02:17:01	Rep. More
02:17:17	Rep. Warburton
02:17:38	Rep. Driscoll exited.
02:18:01	Sen. Balyeat

02:18:35 Rep. Warburton
02:18:44 Sen. Balyeat
02:19:04 Rep. Read
02:20:49 Sen. Balyeat
02:21:04 Vice Chairwoman Sands returned.
02:22:03 Rep. Driscoll returned.
02:22:51 Rep. MacDonald
02:23:50 Mr. Sullivan
02:25:49 Rep. Wagner
02:26:48 Mr. Sullivan
02:28:06 Rep. Wagner
02:28:21 Chairman Peterson
02:28:30 Mr. Sullivan
02:28:35 Chairman Peterson
02:28:40 Mr. Sullivan
02:28:47 Chairman Peterson
02:29:01 Mr. Sullivan
02:29:06 Chairman Peterson
02:29:14 Mr. Sullivan
02:29:43 Chairman Peterson
02:30:14 Mr. Sullivan
02:30:29 Chairman Peterson
02:30:36 Mr. Sullivan
02:31:04 Chairman Peterson
02:31:21 Mr. Sullivan
02:31:25 Chairman Peterson
02:32:36 Mr. Sullivan
02:33:06 Rep. Hansen exited.
02:33:23 Rep. More

Closing by Sponsor:
02:33:47 Sen. Balyeat

02:38:04 Rep. Hansen returned.
02:41:20 Rep. Howard exited.
02:43:51 Rep. Howard returned.
02:44:08 Rep. O'Hara exited.

EXECUTIVE ACTION ON SB 58

02:45:02 **Motion:** Rep. Kerns moved that **SB 58 BE CONCURRED IN.**

Discussion:
02:45:41 Rep. Bangerter
02:46:48 Rep. Menahan
02:48:56 Rep. Loney
02:49:34 Chairman Peterson
02:49:49 Rep. Loney
02:50:19 Rep. Harris
02:51:10 Rep. Sands

EXHIBIT 3
DATE 3/10/2011
SB

SB 268 Referendum to require election of Supreme Court justices from 7 districts across Montana

(Senator Joe Balyeat R-Belgrade)

I've been working on this concept for at least six years. Think I've finally got it right.
First – What the bill does. Second – Why we should do this... send it to the people to vote.

Here's what it does. The bill divides the state into seven districts of approximately equal population. (See map and population chart). Each district is matched to a Supreme Court seat, seats 1 thru 6, with the Chief Justice assigned to district 7. Each subsequent SC judge would be from one of those seven districts, and be elected from one of those seven districts.

The proposed act would be submitted to the voters of Montana along with the 2012 primary election and, if approved by the voters, it will apply to the 2012 general election in November. 2012 is a presidential election year, there should be high voter interest and high turnout, so I wanted the voters to get a crack at this and have it first applied as soon as possible.... Rather than wait till an off-year election like 2014, which is three years down the road.

To make the transition to local district elections as easy as possible for the current sitting justices, the bill provides 4 different escape hatches:

1)The district residency requirement will be waived for all sitting Justices. Justices must reside in the district they are running for in the initial election only, not when they run for re-election. So after they 're first elected to the court, it's obvious that the justices are then free to move their residency to Helena.

2) To the greatest extent possible the current Court justices have been matched to districts based on prior residency.

3) If more than one justice is from the same district, I usually gave preference to the one with seniority, but assigned the more junior judge's seat to the district which bordered their current or prior residency.

4) As a fail-safe, current Justices may run in any district; not just their assigned district. However, they must resign their assigned seat at the time they file in another district, to prevent any of them from trying to get 2, or 7, bites of the apple.

Now, Why should we do this?

You can see that with these four provisions, that Senate Bill 268 isn't seeking to replace or remove current justices, but rather bring justices closer to their MT constituents, and vice versa. It should permit more quality candidates to run for the court, in local races where their reputations will impact their elections, rather than allowing big money to dictate statewide elections where most voters know little about the two candidates running and their vote is often an uneducated guess based mostly on slick ad campaigns, with not much real knowledge of either candidate's track record. With more local candidates involved in localized races, there will be more transparency in the election process, and voters will have a greater understanding of the candidates' backgrounds and credentials.

Moreover, if diversity is good for the legislative process, I'd submit it's also good for the courts. Having a broad cross-section of Montanans serving in the legislature brings multiple perspectives -- resulting in balanced legislation. Likewise, a Supreme Court similarly spread across Montana would reap the same benefits, and reflect the diverse perspectives favored by each local district. It's not a good idea to have a Court comprised mostly of folks with an "inside the beltway" Helena mindset. Nor does it reflect the broad diversity of Montana's small towns and agrarian lifestyle when all 7 judges come from 3 or 4 big cities, reflecting a 'big city" mentality in their decision-making process. And it isn't just the rural/urban divide that needs balanced representation, there's merit in geographic diversity as well. Eastern Montana needs to be heard in Court discussions every bit as much Western Montana. The perspectives of Yellowstone County need to be brought out and contrasted with the Missoula County perspective. The flat-landers and the mountainside guys like me who've grown one leg shorter than the other all want our voices at least heard in the discussion, even if some other opinion eventually prevails.

So Senate Bill 268 seeks balanced and fair representation, and minimizes the influence of money in Supreme Court races to permit more candidates to seek seats. This proposal brings needed geographic balance to the court,and voters will finally have a chance to know who they're voting for in our supreme court elections. In the current system,

voters have no clue about any of the candidates and it comes down to a coin flip. Unfortunately, usually one of the candidates has more coins than the other guy, because special interest groups funnel the money to the candidate they think will most side with their issues on the court.

Eight other states elect Supreme Court Justices by district. Kentucky, Louisiana, Mississippi, and Oklahoma all do straight judicial elections (either partisan or non) by district. Illinois, Nebraska , South Dakota, and New York all use variations of geographic districts for their supreme court seats.

The question may have crossed your mind... What does the Montana Constitution and the Con-Con say about the issue. The constitution, Article VII, section 8, subsection (1) provides that supreme court justices shall be "elected by the qualified electors as provided by law.

Our legal services director has pointed out the following from the ConCon transcripts. It is a motion that failed that would have provided for election by the electors of the state at large. In particular, there was a substitute motion made during the ConCon, as follows:

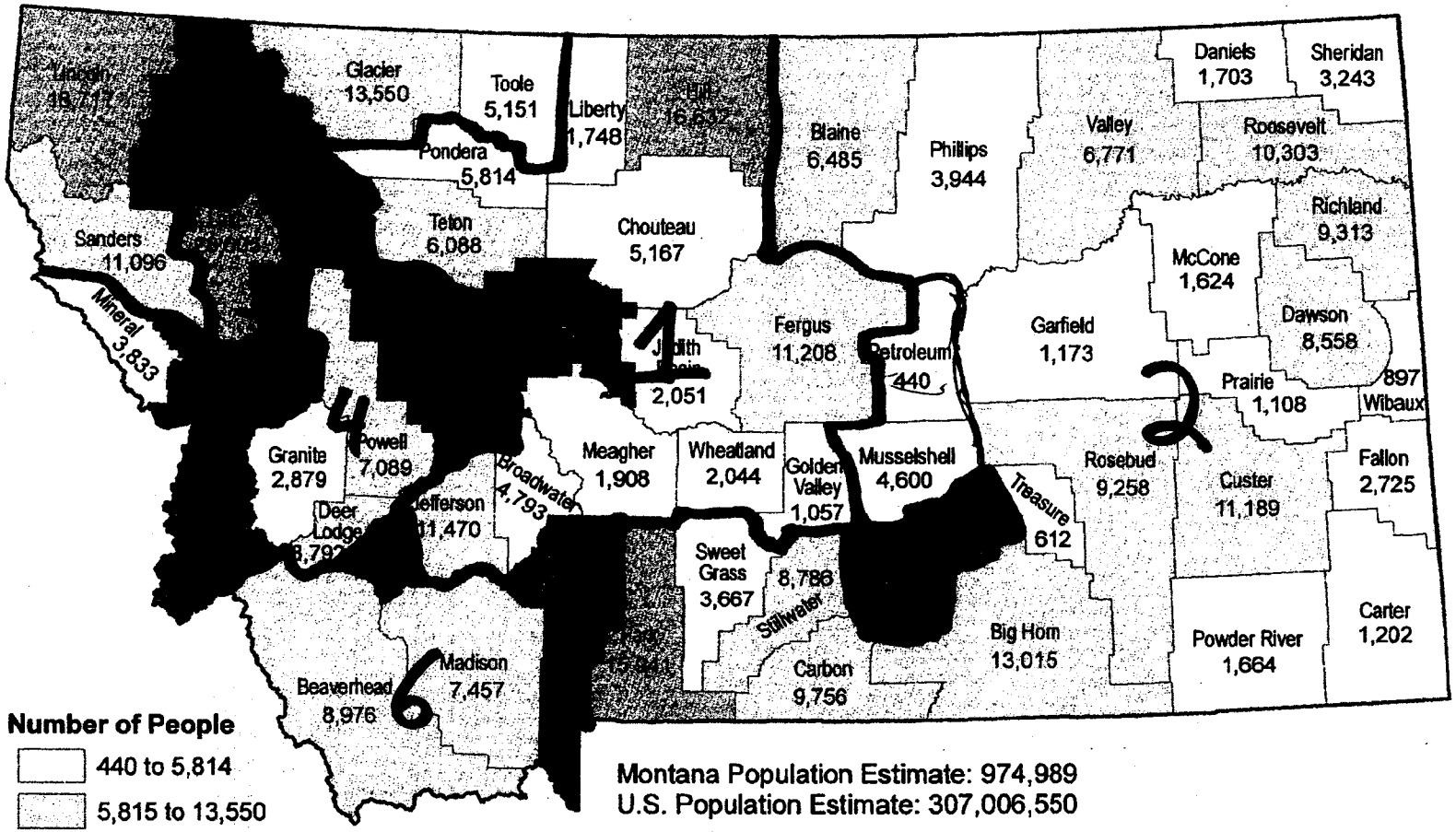
CHAIRMAN GRAYBILL: We'll have a roll call vote. The motion is that "the justices of the Supreme Court *shall be elected by the electors of the state* ***at large***.... " Transcript p. 1097 (emphasis added)"

And again, that motion failed, which clearly indicates that the majority of MT's ConCon didn't want to constitutionally mandate statewide Supreme Court races, but instead let them be set up "as provided by law"... meaning letting the legislature (and perhaps the people as well, if by referendum) decide whether to do it at large statewide or under some other system.

Mr. Chairman, members of the committee, I think I can flesh this out for you best by answering your specific questions about how it works, and why we need to do it. So I'll cut my introduction short and urge you to be thinking of some questions for me. I know Judiciary is extremely busy, so I deliberately didn't recruit any proponents (I may have recruited some opponents). But I do have emails from at least two different district judges indicating their support for this concept. One writes, "I strongly support... district election for Supreme Court justices. [It will] result in a more varied court and attract better candidates."

So , with that, I'll sit and listen to proponents, if any, then opponents. And afterwards, I'll tell you exactly why the opponents are all wrong. Thank you.

Montana County Population Estimates - July 1, 2009



Montana Population Estimate: 974,989
U.S. Population Estimate: 307,006,550

Map by:
Census & Economic Information Center
Montana Department of Commerce
301 S. Park Ave, Helena, MT 59601
406-841-2740 email:ceic@mt.gov
http://ceic.mt.gov

Source: Population Division, U.S. Census Bureau, April 1, 2000 to July 1, 2009 (CO-EST2009-01-30), Released, March 2010

April 2010 - county_pop_est_nos09.mxd

EXHIBIT 4
DATE 3/16/2011
SB 368

See reverse side

* Based on 2009 County Population Estimates

#3

Cascade	82,178	Yellowstone	144,797	Flathead	89,624	Missoula	108,623
Choteau	5,167			Lincoln	18,717	Lake	28,605
Fergus	11208			Glacier	13,550	Mineral	3,833
Gold Vaelley	1,057			Sanders	11,096		
Hill	16,632			Toole	5,151		
Judithbasin	2,051						
Liberty	1,748						
Meagher	1,908						
Pondera	5,814						
Teton	6,088						
Wheatland	2,044						

EXHIBIT
DATE
SB

* Based on 2009 County Population Estimates

Cascade	82,178		Yellowstone	144,797		Flathead	89,624		Missoula	108,623
Choteau	5,167					Lincoln	18,717		Lake	28,605
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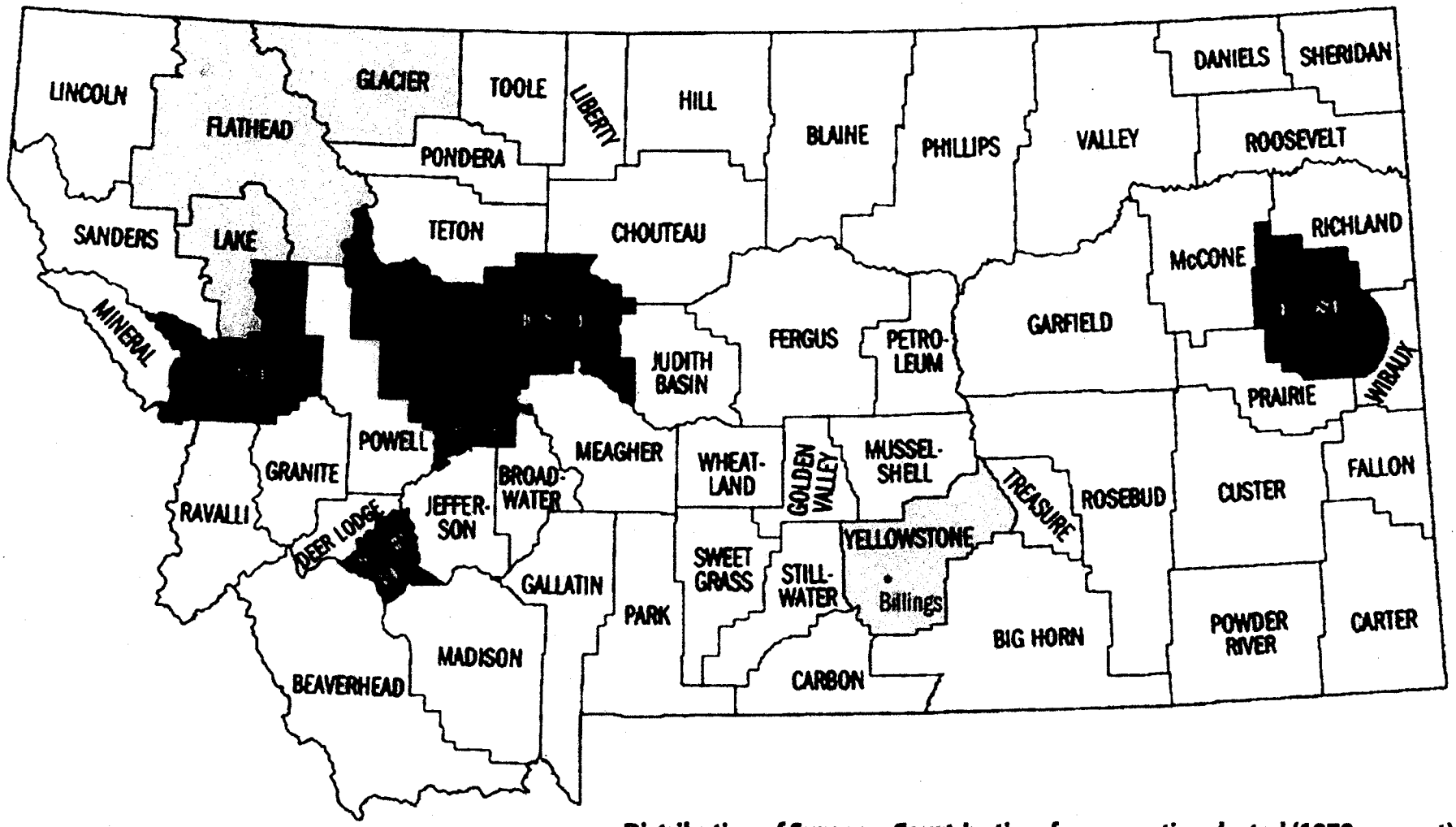
Judithbasin	2,051									
Liberty	1,748									
Meagher	1,908									
Pondera	5,814									
Teton	6,088									
Wheatland	2,044									

Valley	6,771
Wibaux	897

Average of 6 districts (not including Yellowstone) is 138,380 Average.
Smallest is only -1.8% from Average.
Largest (other than Yellowstone) is only +1.9% from Average.

Average of 7 districts including Yellowstone is 139,297 Average.
Yellowstone is only +3.9% from Average.
Smallest is only -2.4% from Average.
Largest other than Yellowstone is only + 1.3% from Average.

EXHIBIT 5
DATE 2/10/2011
SB 268



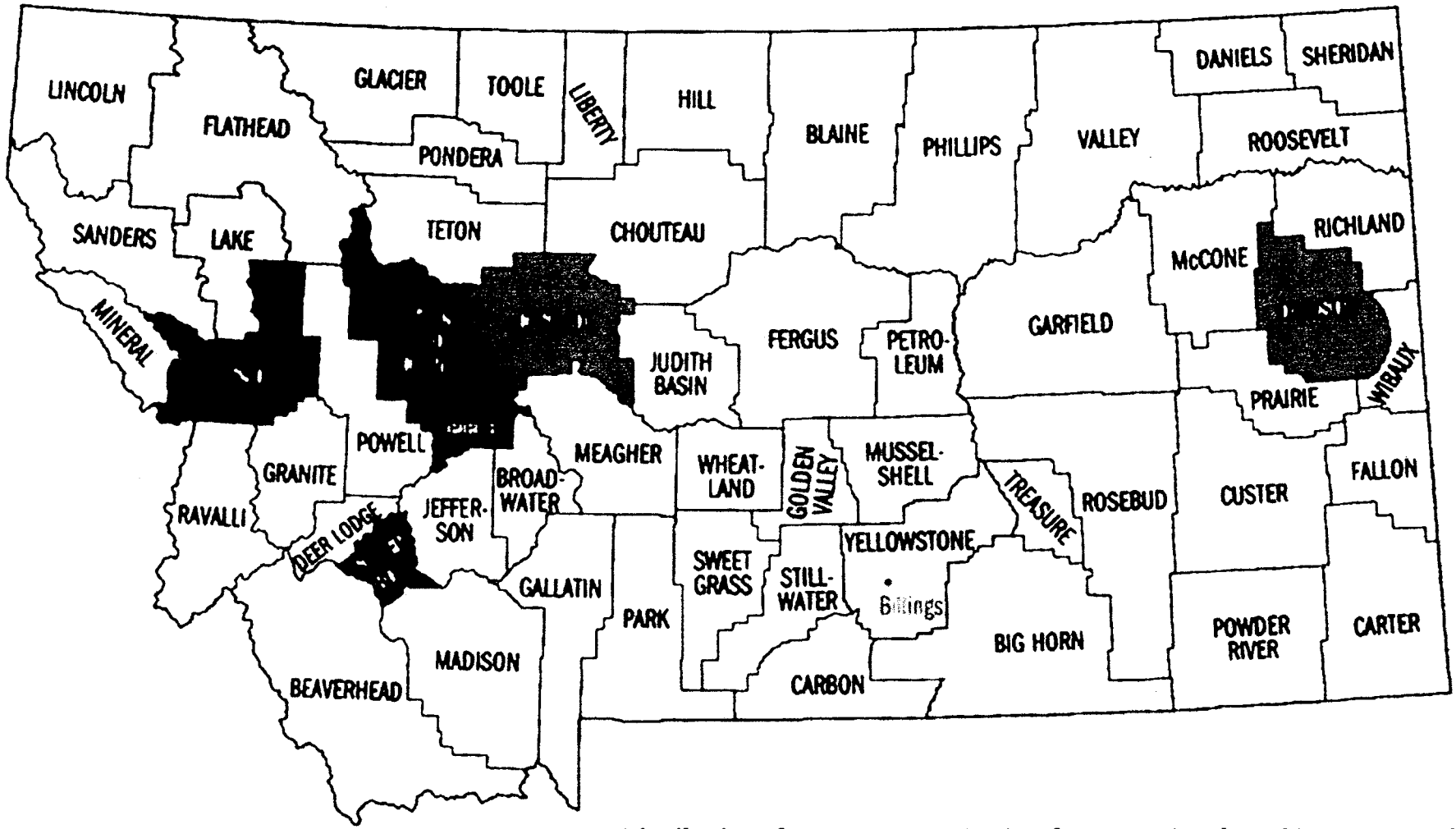
Distribution of Supreme Court Justices from counties elected (1970-present)

- 4 or more justices (8)
- 3 justices
- 2 justices
- 1 justice

14 of 22 FROM HELENA, Missoula, Butte

EXHIBIT 16
DATE 3/10/2011
SB 268

SEN. JOE BALYEAT



Distribution of Supreme Court Justices from counties elected (1970-present)

- 4 or more justices
- 3 justices
- 2 justices
- 1 justice

EXHIBIT 1
DATE 3/10/2011
SB 268

EXHIBIT 8
DATE 3/10/2011
SB 268

ACLU
AMERICAN CIVIL LIBERTIES UNION of MONTANA

American Civil Liberties Union of Montana
P.O. Box 1317
Helena, MT 59624
www.aclumontana.org

SB 268

March 10, 2011

Testimony in Opposition to SB 268

Chairman Peterson and Members of the Committee,

On behalf of the ACLU of Montana—a membership based organization of nearly 2,000 Montana households dedicated to defending the Constitution and the Bill of Rights – I rise in opposition to SB 268.

Language matters. A lot of people for example think they can use terms like "jail" and "prison" interchangeably. By now, after sitting on House Judiciary Committee for some 53 days of this legislative session, you all have learned the difference. Generally speaking, jails are local responsibilities, designed to hold people who are waiting adjudication or who are guilty of misdemeanors requiring less than one year sentences. Prisons are the responsibility of the state, are for people who have been convicted and sentenced to do time in excess of one year.

Similarly, I would dare say that most people use "judges" and "justices" interchangeably. They are wrong to do so, especially in the context of Montana's constitution. According to Black's Law Dictionary,

> JUSTICE, n. In common law. The title given in England to the judges of the king's bench and the common pleas, and in America to the judges of the supreme court of the United States and of the appellate courts of the many states... the same term is also applied to some of the judicial offices of the lowest rank and jurisdiction, such as police justices and justices of the peace.

Sen. Balyeat is asking you to amend two of the four sections of the Montana Code Annotated that deal with Justices, the Supreme Court. I have a separate sheet providing all four sections so that you can compare what is and has been the way justices are dealt with in code compared with what is being proposed.

Title 3 is the Judiciary, Courts. Section 2 is the Supreme Court.

That said, I want you to shift your focus to what is in the Montana Constitution.

Article VII deals with the Judiciary.

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There are 11 sections.

Section 1. deals with judicial power.
Section 2 deals with supreme court jurisdiction.
Section 3 with supreme court organization.
Section 4 with district court jurisdiction
Section 5 with justices of the peace
Section 6 with judicial districts
Section 7 deals with terms and pay.
Section 8 deals with selection
Section 9 deals with qualifications
Section 10 deals with forfeiture of judicial position
Section 11 deals with removal and discipline

I would like to draw your attention to section 9. (emphasis added)

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court **justice** or district court **judge** if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. **Qualifications and methods of selection of judges of other courts shall be provided by law.**

(2) No supreme court justice or district court judge shall solicit or receive **compensation** in any form whatever on account of his office, except **salary** and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, **engage in any other employment** for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. During his term of office, a district court judge shall reside in the district and a justice of the peace shall reside in the county in which he is elected or appointed. **The residency requirement for every other judge must be provided by law.**

History: Amd. Const. Amend. No. 19, approved Nov. 8, 1988.

These are **the** residency requirements for the various level judges, and they cannot be changed or enlarged by statute. The fact that the existing statute uses the words "at large" is a reflection of the Constitutional requirement.

I encourage you to fulfill your oaths of office to support the constitution and vote against SB 268.

Respectfully submitted,

Scott Crichton, Executive Director

3-2-101. Number, election, and term of office. The supreme court consists of a chief justice and six associate justices who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of 8 years from and after the first Monday of January next succeeding their election.

History: En. Sec. 12, C. Civ. Proc. 1895; re-en. Sec. 6244, Rev. C. 1907; amd. Sec. 1, Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 40; re-en. Sec. 8790, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1973; R.C.M. 1947, 93-201; amd. Sec. 1, Ch. 683, L. 1979.

3-2-102. Qualifications and residence. (1) A person is not eligible for the office of justice of the supreme court unless the person is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part); amd. Sec. 160, Ch. 61, L. 2007.

3-2-103. Computation of term of office. The years during which a justice of the supreme court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

3-2-104. Salaries -- expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-403.

(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

EXHIBIT 9
DATE 3/10/2011
SB 268

APPENDIX A

2010 MONTANA SUPREME COURT BENCH & BAR SURVEY

Percentage (& Number) of Respondents Who Strongly Agreed or Agreed*

Survey Question	Overall	Judges	Attorneys	Faculty
1. The Montana Supreme Court's decisions are based on the facts and applicable law.	70.8% (243)	82.8% (24)	69.6% (208)	80.0% (4)
2. The Montana Supreme Court's published opinions clearly state the appropriate rule of law, identify and apply standards of review, and provide instructions on remands.	76.1% (261)	85.7% (24)	74.8% (226)	100.0% (5)
3. The Montana Supreme Court's published opinions explain deviations from the principle of *stare decisis* and the adoption of new developments in the law.	62.5% (208)	75.9% (22)	61.2% (178)	66.7% (4)
4. The Montana Supreme Court issues opinions in adversarial cases in a timely manner.	81.8% (274)	100.0% (28)	80.7% (238)	83.3% (5)
5. The Montana Supreme Court completes its overall workload in a timely manner.	85.9% (280)	100.0% (29)	84.8% (245)	100.0% (3)
6. The Montana Supreme Court treats trial court judges with courtesy and respect in its opinions.	91.6% (305)	82.8% (24)	92.4% (269)	83.3% (5)
7. The Montana Supreme Court treats attorneys with courtesy and respect.	85.0% (289)	92.6% (25)	84.4% (254)	100.0% (6)
8. The Montana Supreme Court provides information about its roles, procedures, and operations.	92.0% (297)	96.7% (29)	91.4% (256)	85.7% (6)
9. The Montana Supreme Court's attorney disciplinary process is fair.	75.5% (188)	96.2% (25)	74.0% (159)	66.7% (2)
10. The Montana Supreme Court imposes disciplinary sanctions on attorneys that are proportionate to the attorneys' misconduct.	77.2% (183)	91.7% (22)	76.3% (158)	50.0% (1)

Average Overall	**79.8%**

* Excludes respondents who answered "Undecided or Unknown".

The Supreme Court conducted an electronic survey between September 7 and September 21, 2010. The survey was sent to 960 District Court judges, law school faculty and adjunct faculty, and appellate attorneys involved in cases disposed of by opinion between July 1, 2008 and June 30, 2010. Three hundred seventy-two (372) individuals responded to the survey -- 34 judges, 7 faculty members, and 321 attorneys (10 unspecified) -- for a response rate of 39.6%.

NOTE: Summing the number of responses from judges, attorneys, and faculty members will not equal the overall numbers because not all respondents identified their occupation.

Testimony on SB268 by Robert Filipovich, Helena, MT March 10, 2011

Mr. Chairman, for the record, my name is Robert Filipovich. I live in Helena, MT and I am here representing myself. I oppose this bill.

Concerning Section 4, (1), the seat numbers for the Montana Supreme Court are: Justice Rice-1; Justice Wheat-2; Justice Cotter-3, Justice Baker-4, Justice Nelson-5, Justice Morris-6; Chief Justice McGrath does not have a number on his seat. All this is according to the Chief Justice's secretary Pam Hunthausen.

The Court has been evaluated in 2008 and 2010 by surveys of Montana district court judges, Law School faculty and adjunct faculty, and appellate attorneys involved in cases disposed of by opinion between July 1, 2008 and June 30, 2010. A response rate of 39.6% for the 2010 ten question survey yielded an overall average approval rating (strongly agree or agree) of 79.8%, up from 71.7% in the 2008 survey. (See www.courts.mt.gov/supreme, then click on performance measures

Here are the coming elections under this bill: Seats 5 and 6 will be up for election in 2012. Seats 1 and 2 will be up in 2014. Seats 3 and no number will be up in 2016, and seat 4 will be up in 2018. (This information from the clerk of the Court, phone 444 3858). If there is an undisputed census available and if Montana has the same number of counties as it does today, seats 5 and 6 will be up for election again in 2020.

Black's Law Dictionary, 7th edition, 1999 defines gerrymandering: "1. The practice of dividing a geographical area into electoral districts . . . to give one political party an unfair advantage by diluting the opposition's voting strength." My survey of Montana Senate races in 2006 through 2010 shows a political party reversal rate of 10.67%. A case can be made.

After the 1965 Voting Rights Act signaling the end of racial gerrymandering, partisan gerrymandering took the U. S. Supreme Court's attention. In Davis v. Bandemer (1986), a 6-3 majority found that attacks on partisan gerrymanders under the equal protection clause were justiciable. (Encyclopedia of the American Constitution 2005 article: 'gerrymandering update'). Black's Law Dictionary defines "justiciable": "properly brought before a court of justice; capable of being disposed of judicially."

The ballot language in Section 9 of SB268 camouflages the radical change from statewide election of all justices to district elections. Section 9 omits the crucial change of these districts being assigned; it also proposes a new, unmentioned restriction on the appointment of justices. Perhaps most important, it eliminates the voters' right to vote for their Chief Justice.

Finally, this bill puts an interesting twist on the principle of 'one person, one vote'. If this bill becomes law, each Montana voter will only have one vote, for one Supreme Court justice, once every eighth year.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 3/10/2011

NAME	PRESENT	ABSENT/ EXCUSED
REP. KEN PETERSON, CHAIR	✓	
REP. KRAYTON KERNS, VICE CHAIR	✓	
REP. DIANE SANDS, VICE CHAIR		✓
REP. MIKE MENAHAN		✓
REP. ROBYN DRISCOLL	✓	
REP. KEITH REGIER	✓	
REP. DAN SKATTUM	✓	
REP. CLEVE LONEY	✓	
REP. MARGARET MACDONALD	✓	
REP. CAROLYN PEASE-LOPEZ	✓	
REP. MICHAEL MORE		✓
REP. LIZ BANGERTER	✓	
REP. WENDY WARBURTON		✓
REP. BOB WAGNER	✓	
REP. ELLIE BOLDMAN HILL		✓
REP. BILL HARRIS	✓	
REP. KRISTIN HANSEN	✓	
REP. DAVID HOWARD		✓
REP. JESSE O'HARA		✓
REP. JOE READ	✓	

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Thursday, March 10, 2011
SB 268 - Referendum to require election of supreme court justices from districts
Sponsor: **Senator Joe Balyeat**

PLEASE PRINT

Name	Representing	Support	Oppose
Chuck Denowh	UPOM	x	
Bill Egge	Montana State Fed.		X
Joe Sullivan	State Board of Ins.		X
Al Smith	MTLA		X
Robert Filipovich	self.		x
Scott Crichton	ACLU		X
John Adke	self.		X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Ken Peterson, on March 14, 2011 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Ken Peterson, Chairman (R)
Rep. Krayton Kerns, Vice Chairman (R)
Rep. Liz Bangerter (R)
Rep. Robyn Driscoll (D)
Rep. David Howard (R)
Rep. Cleve J. Loney (R)
Rep. Margaret (Margie) MacDonald (D)
Rep. Mike Menahan (D)
Rep. Jesse O'Hara (R)
Rep. Carolyn Pease-Lopez (D)
Rep. Joe Read (R)
Rep. Keith Regier (R)
Rep. Dan Skattum (R)
Rep. Wendy Warburton (R)

Members Excused: None

Members Absent: Rep. Diane Sands, Vice Chairman (D)
Rep. Kris Hansen (R)
Rep. Bill Harris (R)
Rep. Ellie Boldman Hill (D)
Rep. Michael (Mike) More (R)
Rep. Bob Wagner (R)

Staff Present: Karen Armstrong, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 600, 3/8/2011; SB 324, 3/8/2011

Executive Action: SB 149, SB 151, SB 238, SB 268, SB 337

02:56:54 Chairman Peterson
02:57:00 Mary Phippen, Montana Magistrates Association (MMA)
02:57:48 Rep. MacDonald

02:58:03 **Motion:** Rep. K. Peterson moved that **SB 238 BE AMENDED.**
EXHIBIT(juh57a12)

Discussion:
02:58:22 Chairman Peterson
02:59:16 Rep. Howard
02:59:40 Chairman Peterson
02:59:45 Rep. Howard
02:59:55 Chairman Peterson

03:00:36 **Vote:** Motion carried 19 -1 by voice vote with Rep. Bangerter voting no. Rep. Wagner voted by proxy.

03:00:44 **Motion:** Rep. Kerns moved that **SB 238 BE CONCURRED IN AS AMENDED.**

Discussion:
03:00:58 Rep. Bangerter
03:01:41 Rep. More
03:02:04 Rep. Warburton
03:02:24 Rep. Howard
03:03:11 Chairman Peterson
03:04:02 Vice Chairman Kerns
03:04:20 Rep. Regier
03:04:40 Chairman Peterson
03:04:47 Ms Phippen, MMA
03:05:07 Rep. Regier
03:05:20 Rep. Skattum
03:05:50 Ms Phippen
03:06:31 Rep. Skattum
03:06:51 Ms Phippen
03:07:27 Chairman Peterson
03:08:00 Rep. Harris
03:08:23 Rep. O'Hara
03:09:03 Vice Chairwoman Sands

03:11:07 **Vote:** Motion carried 16-4 by roll call vote with Rep. Hansen, Rep. Harris, Rep. Skattum and Rep. Warburton voting no. Rep. Wagner voted by proxy. Rep. Menahan will carry the bill.

EXECUTIVE ACTION ON SB 268

03:11:17 **Motion:** Rep. Kerns moved that **SB 268 BE CONCURRED IN.**

Discussion:
03:11:32 Rep. MacDonald

03:12:39 Chairman Peterson
03:12:44 Rep. MacDonald
03:13:59 Rep. Warburton
03:14:41 Rep. Hansen
03:15:12 Rep. Pease-Lopez
03:15:44 Rep. Harris

03:16:02 **Vote:** Motion carried 14-6 by roll call vote with Rep. Driscoll, Rep. Hill, Rep. MacDonald, Rep. Menahan, Rep. Pease-Lopez and Rep. Sands voting no. Rep. Wagner voted by proxy. Rep. Peterson will carry the bill.

EXECUTIVE ACTION ON SB 337

03:17:19 **Motion/Vote:** Rep. Kerns moved that **SB 337 BE CONCURRED IN**. Motion carried 20-0 by voice vote. Rep. Wagner voted by proxy. Rep. Peterson will carry the bill.

03:21:20 Chairman Peterson

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 3/14/2011

NAME	PRESENT	ABSENT/ EXCUSED
REP. KEN PETERSON, CHAIR	✓	
REP. KRAYTON KERNS, VICE CHAIR	✓	
REP. DIANE SANDS, VICE CHAIR		✓
REP. MIKE MENAHAN	✓	
REP. ROBYN DRISCOLL	✓	
REP. KEITH REGIER	✓	
REP. DAN SKATTUM	✓	
REP. CLEVE LONEY	✓	
REP. MARGARET MACDONALD	✓	
REP. CAROLYN PEASE-LOPEZ	✓	
REP. MICHAEL MORE		✓
REP. LIZ BANGERTER	✓	
REP. WENDY WARBURTON	✓	
REP. BOB WAGNER		✓
REP. ELLIE BOLDMAN HILL		✓
REP. BILL HARRIS		✓
REP. KRISTIN HANSEN		✓
REP. DAVID HOWARD	✓	
REP. JESSE O'HARA	✓	
REP. JOE READ	✓	

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 268** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Ken Peterson, Chair

To be carried by Representative Ken Peterson

- END -

Committee Vote:
Yes 14, No 6
Fiscal Note Required __

SB0268001SC05152.hgh

3/14

2011 Montana Legislature

Additional Bill Links PDF version

SENATE BILL NO. 268

INTRODUCED BY BALYEAT, ESSMANN, PRIEST, HINKLE, JACKSON, VINCENT, MURPHY, ARTHUN, SONJU, BUTTREY, BROWN, STAHL, HARRIS, RIPLEY, WALKER, KLOCK, SKEES, TUTVEDT, BLASDEL, HALE, MOORE, HENDRICK, CLARK, BRENDEN, SALOMON, MCGILLVRAY, KNOX, LONEY, CUFFE, GREEF, ROSENDALE, BRODEHL, EHLI, SKATTUM, OLSON, MCNIVEN, VANCE, BURNETT, BLYTON, HOWARD, MACLAREN, WELBORN, DE. BARRETT, STEINBEISSER, O'NEIL, O'HARA, FLYNN, G. BENNETT, SMALL, MORE, INGRAHAM, C. SMITH, ARNTZEN, READ, KERNS, WARBURTON, BERRY, WASHBURN, WITTICH, P. CONNELL, R. HUTTON, L. JONES, B. LAKE, S. REICHNER, D. LEWIS

AN ACT REQUIRING THAT SUPREME COURT JUSTICES BE ELECTED AND APPOINTED FROM SUPREME COURT DISTRICTS; ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION TO BE HELD CONCURRENTLY WITH THE 2012 PRIMARY ELECTION; AMENDING SECTIONS 3-2-101 AND 3-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-2-101, MCA, is amended to read:

"3-2-101. Number, election, and term of office -- selection of chief justice. (1) The supreme court consists of a chief justice and six associate justices who ~~are elected by the qualified electors of the state at large~~ must be qualified electors of the district from which they are elected, with each member elected from a separate district of the state as provided in [section 3]. Each justice must be elected at the general ~~state elections~~ election next preceding the expiration of the ~~terms~~ term of office of ~~their predecessors, respectively,~~ the justice's predecessor and ~~hold their offices~~ holds office for the term of 8 years from ~~and after~~ the first Monday of January ~~next~~ succeeding ~~their~~ the justice's election.

(2) After the general election in 2016, the chief justice must be selected by the majority vote of the seven justices at the first meeting of the court in each year after a general election."

Section 2. Section 3-2-102, MCA, is amended to read:

"3-2-102. Qualifications and residence. (1) A person is not eligible for the office of justice of the supreme court unless the person is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office. Once elected from a district, a justice is not required to reside within the district during the justice's service in office.

(3) A supreme court justice must, at the time of initial election, be a qualified elector of the supreme court district from which the justice is elected. A supreme court justice appointed to fill a vacancy must, at the time of appointment, be a qualified elector of the same initial supreme court district as the justice being replaced, and in an election following an appointment, the elected justice must be a qualified elector of the initial district."

Section 3. Supreme court districts defined -- number of judges. (1) In this state there are seven supreme court judicial districts, distributed as follows:

(a) 1st district: Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Liberty, Meagher, Pondera, Teton, and Wheatland Counties;

(b) 2nd district: Big Horn, Blaine, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, and Wibaux Counties;

(c) 3rd district: Yellowstone County;

(d) 4th district: Lewis and Clark, Deer Lodge, Granite, Jefferson, Ravalli, Powell, and Broadwater Counties;

(e) 5th district: Flathead, Lincoln, Glacier, Sanders, and Toole Counties;

(f) 6th district: Gallatin, Madison, Beaverhead, and Silver Bow Counties;

(g) 7th district: Missoula, Lake, and Mineral Counties.

(2) There must be one supreme court justice selected from each district.

(3) The legislature shall review the districts after each decennial census for purposes of maintaining districts with approximately equal populations while following county lines.

Section 4. Transition. (1) [This act] may not remove any justice that is holding office on [the effective date

of this act] during the term for which the justice was elected or appointed. After [the effective date of this act], each sitting associate justice must be assigned to the judicial district that corresponds to the associate justice's current seat number and the chief justice must be assigned to the seventh district.

(2) (a) Except as provided in subsection (2)(b), each supreme court justice who chooses to seek reelection at the end of the justice's current term shall run for reelection in the district to which the justice is assigned under subsection (1).

(b) A sitting justice that chooses to seek election in a district other than the district assigned under subsection (1) may run for election in the district if the justice resigns the justice's current seat effective as of the date the justice files for election in the district to which the justice seeks election.

(3) In the 2012 election, the two candidates receiving the most votes in the primary for each seat up for reelection advance to the 2012 general election for the district that corresponds to the same seat number.

Section 5. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 3, chapter 2, and the provisions of Title 3, chapter 2, apply to [section 3].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective upon approval by the electorate.

Section 8. Applicability. [This act] applies to the election and appointment of supreme court justices to terms that begin on or after [the effective date of this act].

Section 9. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at a special election to be held concurrently with the primary election held in the spring of 2012 by printing on the ballot the full title of [this act] and the following:

[] FOR requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

[] AGAINST requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

- END -

Latest Version of SB 268 *(SB0268.ENR)*

Processed for the Web on April 8, 2011 (3:10pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2011 Legislature | Leg. Branch Home

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Prepared by Montana Legislative Services

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